

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-20066, D-4

Case No. 11-20129 D-10

-v-

VERNON RICH, et al.,

Defendant.

ARRAIGNMENT AND DETENTION HEARING

BEFORE MAGISTRATE JUDGE **LAURIE J. MICHELSON**  
United States Magistrate Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
**Tuesday, July 31, 2012**

**APPEARANCES:**

FOR THE PLAINTIFF: **SAIMA MOHSIN**  
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(NONE OFFERED)

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1 Detroit, Michigan

2 July 31, 2012

3 1:35 p.m.

4 (The Transcriber was not present for this Hearing.)

5 \* \* \*

6 THE CLERK: The Court recalls case 11-20066, USA vs.  
7 Vernon Rich. Oh, there's the another one. 11-20129.

8 MS. MOHSIN: Yes. Good afternoon, your Honor. Saima  
9 Mohsin on behalf of the United States. This is the date and  
10 time that has been set for the defendant's completion of  
11 arraignment on two different indictments, as well as a  
12 detention hearing. I'm tendering to the Court copies of  
13 completed acknowledgements on both of those cases.

14 THE COURT: Okay. Thank you.

15 MR. MATEO: Good afternoon, your Honor. Juan Mateo on  
16 behalf of Vernon Rich, who stands to my left.

17 THE COURT: Good afternoon, counsel.

18 Good afternoon, Mr. Rich. Mr. Rich, as Ms. Mohsin  
19 indicated, you're here this afternoon, first to complete the  
20 arraignment on the two indictments that have been brought  
21 against you, as well as several others, as well as a detention  
22 hearing. I've received from counsel a copy of your  
23 acknowledgments of both indictments.

24 And, Mr. Mateo, what would you like to do about  
25 reading the indictments?

1 MR. MATEO: Your Honor, we would waive reading of both  
2 indictments, stand mute to both indictments.

3 THE COURT: Okay. And, Counsel, you're okay if we do  
4 these both together?

5 MR. MATEO: Certainly.

6 THE COURT: Okay. Mr. Rich, as I said, I've received  
7 your acknowledgment of the indictments. I just want to make  
8 sure that you've received both indictments and that you've had  
9 an opportunity to review them and to discuss the charges that  
10 have been brought against you with your counsel.

11 Have you had that opportunity?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. And your acknowledgment of the  
14 indictment in 11-20066 indicates that if you're convicted or if  
15 you were to plead guilty to Count 6, you could be sentenced as  
16 follows: A minimum of 5 years to 40 years in prison, a 5  
17 million dollar fine or both.

18 Mr. Rich, as to case 11-20066, do you understand the  
19 charge that's been brought against you on Count 6, as well as  
20 the penalties that you could face if you're convicted or if you  
21 were to plead guilty to that count?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. And in case 11-20129, the  
24 acknowledgment of the indictment indicates that if you're  
25 convicted or if you were to plead guilty, you could be

1 sentenced as follows:

2 On Count 1, to life in prison, a \$250,000 fine or  
3 both.

4 On Count 2, up to 5 years in prison, a \$250,000 fine  
5 or both.

6 On Count 3, 10 years to life in prison, a 10 million  
7 dollar fine or both.

8 On Counts 4, 5, 6, 15, and 16, up to 20 years in  
9 prison, a one million dollar fine or both.

10 And on Counts 19 and 22, up to 10 years in prison, a  
11 \$250,000 fine or both.

12 So I want to ask you as well, Mr. Rich, with respect  
13 to case 11-20129, do you understand the charges that have been  
14 brought against you, as well as the penalties that you could  
15 face if you're convicted or if you were to plead guilty to  
16 those counts in the indictment?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. And I understand from your counsel  
19 that you stand mute. So the Court is going to enter a plea of  
20 not guilty on your behalf to Count 6 of the indictment in case  
21 11-20066, and on Counts 1, 2, 3, 4, 5, 6, 15, 16, 19 and 22, on  
22 case 11-20129.

23 Counsel, I know this is also the time that was  
24 scheduled for the detention hearing. Are the parties prepared  
25 to proceed?

1 MS. MOHSIN: The Government is ready, your Honor.

2 THE COURT: Mr. Mateo?

3 MR. MATEO: Ready, your Honor.

4 THE COURT: Okay. Ms. Mohsin?

5 MS. MOHSIN: Your Honor, the Government is seeking  
6 detention of this defendant, and we have filed previously a  
7 written proffer in furtherance of our motion for detention. It  
8 was provided to the Court. I don't know if your Honor has --

9 THE COURT: Yes.

10 MS. MOHSIN: -- had an opportunity to review it.

11 THE COURT: Yes, I have. And I have reviewed Mr.  
12 Mateo's brief as well.

13 MS. MOHSIN: Your Honor, then I will direct my  
14 comments both to that written proffer, as well as to the  
15 Pretrial Services' report.

16 When we initially appeared before the Court and the  
17 issue of detention first arose, Pretrial Services was  
18 recommending this defendant's release. However, the Government  
19 brought to the attention of the Pretrial Services' officer that  
20 the information contained in the Pretrial Services' report  
21 related to the defendant's criminal history was incomplete.

22 It's my understanding, having spoken with Pretrial  
23 Services, that they have updated their recommendation. I've  
24 looked at their report. They've included other convictions  
25 that had not previously been included in the Pretrial Services'

1 report. And, therefore, their recommendation for other reasons  
2 that are also set forth in their memorandum, they are now  
3 recommending detention.

4 So first and foremost, your Honor, I would proffer to  
5 the Court that the defendant has been interviewed by Pretrial  
6 Services, and their assessment is that he ought to be detained  
7 pending the outcome of this case. And I would proffer that  
8 report in furtherance of that.

9 This is a presumption case. And therefore, the  
10 Government would ask the Court to take note of that as well.  
11 The defendant stands before this Court, having been charged in  
12 a very large number of counts, in two separate indictments  
13 pending in this district.

14 The conduct that is alleged for both of those  
15 indictments spans a large number of years, and it relates  
16 largely to his involvement with a motorcycle gang called the  
17 Devils Diciples.

18 As the Court has indicated that it has reviewed the  
19 Government's proffer, I will not go into detail about that  
20 organization other than to say that entering into that  
21 organization, once you have been admitted, it is difficult to  
22 leave that organization. And typically, individuals who seek  
23 to leave either leave in bad standing, which means that they  
24 are kicked out of the club, or in some sort of semi-retirement.

25 So I put that out there because once an individual is

1 part of this organization, they are a part of this  
2 organization. And if they want to get out of it, they have to  
3 surrender their motorcycle, their colors and any property that  
4 they have that bears the name or emblem or symbol of the club.

5 THE COURT: Do you refute or dispute the defendant's  
6 claim that he withdrew in 2007?

7 MS. MOHSIN: I neither refute or dispute it. I would  
8 tell the Court that I don't have any knowledge that he did  
9 that. I don't believe the investigation has shown that or not  
10 shown that. What I say to the Court is it is difficult to  
11 leave this organization, and you are considered a part of this  
12 organization. That's what the investigation has shown.

13 I can proffer to the Court that, you know, this  
14 defendant has been at at least one DD related event in the last  
15 12 months. I am neither suggesting nor implying that he is a  
16 member right now, but he was a very long-standing member of  
17 this organization. And many of the criminal activities that he  
18 has been engaged in over the course of the last ten plus years  
19 have been in furtherance of this organization and the goals of  
20 this organization.

21 Count 1 of indictment 11 --

22 THE COURT: But if we assume, or if I assume for  
23 purposes of this hearing that he did withdraw in 2007, we'd be  
24 talking about conduct from pre-five years ago?

25 MS. MOHSIN: Well, your Honor, I think what -- whether



1 he withdrew or not, I don't believe we have any information  
2 that he withdrew. In other words, he has made that statement  
3 in his, in his motion, but what I am saying to the Court is you  
4 cannot withdraw. You either retire, in which case you're still  
5 a member, or you get kicked out.

6 THE COURT: Okay. Please continue.

7 MS. MOHSIN: Thank you, your Honor.

8 This individual has been involved with this  
9 organization for over ten years. He had a leadership role  
10 within this organization. The evidence against him, as it  
11 relates to the counts set forth in the indictment is  
12 overwhelming.

13 We have a number of various search warrants, wiretap  
14 evidence, informant and cooperating witness information. We  
15 have seizures of evidence. We have a tremendous amount of  
16 evidence against this defendant. He is facing a ten-year  
17 mandatory minimum on one of the counts, and up to life  
18 imprisonment on another.

19 A rough calculation of his guideline range as set  
20 forth, based solely upon the methamphetamine distribution  
21 quantities, and not on the other conduct in this case, yields a  
22 level 38, which is 262 to 327 months' incarceration.

23 He stands before the Court with a fairly lengthy  
24 criminal history. Although many of the prior convictions are  
25 misdemeanors, I would note for the Court that he has been

1 engaged in criminal activity fairly consistently and regularly  
2 since the early 1980's. He has gone from arrest and conviction  
3 to arrest and conviction.

4 In 1990, he was convicted in Kansas of a felony. He  
5 was placed on probation. He violated the terms of his  
6 probation in a number of different ways, and as a result, they  
7 terminated his probation and he was incarcerated for the term  
8 of one to three years.

9 He has had other convictions. Most recently in 2008,  
10 he was convicted of a methamphetamine possession related  
11 offense. I draw your attention to that conviction, as we have  
12 set forth in our proffer for detention. Some of the  
13 circumstances surrounding that particular conviction include  
14 this defendant's attempts to mislead the court.

15 He had someone prepare a false document claiming that  
16 the nearly \$2,000 in cash that he had on his possession at the  
17 time of his methamphetamine related arrest, that that money was  
18 in fact lawfully earned when, in fact, it was not. And that  
19 was in an attempt to prevent that money from being forfeited.  
20 That was a document that was submitted to the, to the police  
21 department or the court that was involved in that arrest. So  
22 that is one example. There are --

23 THE COURT: He got bond in that case, though, right?

24 MS. MOHSIN: Well, Judge, he may have gotten bond, but  
25 he attempted to defraud the court in that case when he

1 presented a false affidavit. He had someone present a false  
2 affidavit claiming that that money was lawfully earned.

3 What I'm saying and suggesting to the Court is that  
4 this is a defendant who will do -- you know, he will engage in  
5 misleading and fraudulent conduct in an effort to gain an  
6 advantage, even with the court. And in that case, that's what  
7 occurred. And the individual that prepared that false document  
8 was someone that worked -- that he worked with at his place of  
9 employment.

10 THE COURT: And I don't want to minimize that; I think  
11 that's significant. But are you saying that you think that  
12 makes him a flight risk, or a danger, or both?

13 MS. MOHSIN: I think under 3142, it is a reflection of  
14 his character. And I think that we are setting forth all of  
15 the factors we think are important about this individual's  
16 character:

17 The fact that he has this lengthy criminal history.  
18 The fact that he has, in addition to that incident involving  
19 the \$1,900, it's also set forth in that affidavit that he made  
20 attempts to destroy evidence while he was in jail by contacting  
21 members of the Devils Diciples, as well as family to go and  
22 find evidence in his home that may have been seized by law  
23 enforcement if a search warrant had been executed, and he told  
24 them to hide that evidence. So he has engaged -- we know about  
25 this through wiretap evidence. We were listening to his calls

1 while he was making calls saying please hide evidence that may  
2 be found, you know, conversations to that effect.

3 So this is an individual who, when he is confronted  
4 with some sort of law enforcement action, will take active  
5 steps to defraud the Court, to hide evidence or destroy  
6 evidence. And so as a result, I think that he is a risk of  
7 flight.

8 And certainly when someone is facing the magnitude of  
9 the charges in this case, and I would also say, Judge, the  
10 volume of evidence against this particular defendant in this  
11 case, the incentive to flee is substantial.

12 The Government has disclosed to this defendant that we  
13 were engaged in wiretapping of his telephone for a period of  
14 time. During the course of those wiretaps, substantial  
15 evidence was seized, corroborated through search warrants and  
16 witnesses, et cetera.

17 And so I think that he has a tremendous incentive to  
18 flee the jurisdiction in light of the fact that the evidence is  
19 so strong and does span such a large period of time, and the  
20 fact that he is looking at so much time, if convicted of these  
21 offenses. So I think it's relevant to his character. I think  
22 it's relevant to the analysis of whether he poses a danger of  
23 fleeing.

24 This is a defendant who, as I indicated, was in a  
25 position of leadership. The leadership of this organization is

1 of particular interest here because as the RICO indictment sets  
2 forth, it is the leadership that is involved in ordering,  
3 executing and making sure that orders are executed by, by the  
4 members of the organization, whether they are to engage in  
5 illegal gambling activity or illegal assaults or illegal  
6 methamphetamine manufacturing or trafficking across the board.  
7 This was an organization that was engaged in a wide variety of  
8 criminal activities over a very long period of time. And the  
9 leaders of that organization were required to make sure that  
10 the orders of the national leadership as well as the local  
11 leadership were followed through.

12           Vernon Rich, as a long-standing member and a president  
13 of the Port Huron chapter of the Devils Diciples was involved  
14 in that activity.

15           One moment, please, your Honor?

16           THE COURT: Sure.

17           (Brief pause.)

18           MS. MOHSIN: Finally, your Honor, I would like to  
19 address this defendant's employment. According to the  
20 defendant's motion, as well as the Pretrial Services' report,  
21 he was or is employed by ABZ Steel in Shelby Township and has  
22 been for over 13 years.

23           A lot of the Government's evidence about the drug  
24 trafficking that went on in this case, not limited to  
25 methamphetamine, but including other prescription drugs, shows

1 that this defendant was selling to members, or rather employees  
2 at that location, and that, in fact, very large amount of  
3 customers at that particular location. The individual that I  
4 referenced earlier that provided that false letter that he had  
5 earned the money through employment also was employed by the  
6 same company.

7 So I would provide that information to the Court to  
8 say that I understand that he has claimed that he has been  
9 involved in employment there for 13 years. However, there are  
10 a very large number of people at that particular organization  
11 that were involved in both the receipt and distribution of drug  
12 trafficking for this defendant over the period of time that's  
13 alleged in the indictment.

14 We believe, your Honor, that this defendant is a risk  
15 of flight. We believe that he is also a danger to committing  
16 additional criminal activities. His criminal history starts in  
17 the 1980's and it goes all the way up to the 2008 conviction.  
18 That's a very long period of time.

19 The indictment talks about a wide range of activities  
20 that were included during much of that time. And we believe  
21 that Mr. Rich and his criminal activities, that there is a risk  
22 that he will continue to engage in these criminal activities  
23 because of the fact that he has such a long history of  
24 continuous criminal conduct.

25 For those reasons, we believe that he is a danger to

1 the community. We believe that he is a risk of flight. It is  
2 a presumption case. We would ask that the defendant be  
3 detained.

4 THE COURT: Was he on probation or any sort of  
5 supervised release? The indictment, I guess, spans such a long  
6 period of time that he probably was, for some of the offenses?

7 MS. MOHSIN: Well, during the time the indictment --  
8 of the indicted conduct; is that what you're asking?

9 THE COURT: Yeah. Was he on any sort of supervised  
10 release?

11 MS. MOHSIN: In 2005, he pled guilty to the felony  
12 motor vehicles possession/delivery of vehicle ID. And he was  
13 sentenced in November of 2005 to two years' probation, and  
14 probation was terminated in 2006.

15 His membership and participation in the club's  
16 activities, including the gambling and drug trafficking  
17 activity that I can think of, off the top of my head, would  
18 have been going on during that period of time.

19 THE COURT: Okay. Thank you.

20 Mr. Mateo, do you agree this is a presumption case?

21 MR. MATEO: I agree it's a presumption case, and  
22 that's why I've done the -- taken an extraordinary step of  
23 filing a written proffer to assist the Court in rebutting --  
24 reviewing the evidence that rebuts the presumption.

25 And what we have here today, your Honor, is a young

1 man who is 47 years old, who is gainfully employed and has been  
2 living in the area for many, many years, almost his entire  
3 life. And we have a case where we have documented evidence of  
4 how he does while he is under supervision of the court. And  
5 what the Government --

6 THE COURT: How about Kansas, though?

7 MR. MATEO: Well, Kansas was 1990.

8 THE COURT: Tell me about Kansas.

9 MR. MATEO: And I'll explain it.

10 THE COURT: Okay.

11 MR. MATEO: Before, as I was writing the proffer, your  
12 Honor, I was working under the apprehension, or the  
13 understanding that Pretrial Services, for the third time since  
14 2008, was recommending that Mr. Rich receive an unsecured bond,  
15 including Mr. Homer Hinojosa, who did the Pretrial Services'  
16 report in this case.

17 When we were last here, the Government indicated that  
18 they were aware of this Kansas case, and they were going to  
19 present that information to Pretrial Services. I talked to Mr.  
20 Hinojosa after he got that information last week. And last  
21 week, he told me that was not going to change his  
22 recommendation of unsecured bond.

23 I then filed this extensive memorandum, detailing Mr.  
24 Rich's past with this court and other courts where he has been  
25 under supervision. And today, I was able to discuss and get



1 more information about the Kansas case.

2           What happened in Kansas, that was in 1990, he was  
3 placed on probation for a bad check case. Probation was  
4 transferred to the Port Huron area so that he could reside with  
5 his sister. He had nowhere to live. His sister, her name is  
6 Patricia, she took him -- was taking care of him. Then she got  
7 evicted. When she got evicted from the home, Mr. Rich had  
8 nowhere else to go. Kansas did ask him to come back and he did  
9 not come back. So technically, he did not return and he was  
10 supposed to return. But he had no place to go, your Honor.  
11 Once he eventually got back to Kansas, he did serve his time.  
12 He was on parole. I attached as one of my exhibits the parole  
13 discharge papers discharging him from parole. And we're going  
14 back to the '90s now.

15           Now, in this court, as of 2008, Mr. Rich has been  
16 interviewed by Pretrial Services on three separate occasions.  
17 And each time, whether it's Mr. Dwyer from Pretrial Services,  
18 or Mr. Hinojosa, prior to this memo he filed yesterday, they  
19 always recommended an unsecured bond, and that's because he has  
20 a track record. He had a conviction in 2007 where he was on  
21 probation for two years in the St. Clair, yeah, St. Clair  
22 County Circuit Court. He completed his term of probation.  
23 Other cases where he had been supervised by the court, it's all  
24 documented, Judge, if he's told to come to court, he comes to  
25 court. If he's told to pay his fines and costs, he does that.

1           And for the Government to stand here and suggest that  
2 he is this horrible risk of flight and this danger to the  
3 community, I think, is disingenuous.

4           What has the Government done with Mr. Rich  
5 specifically? They have been talking to him since this  
6 investigation has been ongoing. They served him with a grand  
7 jury subpoena for his fingerprints. He cooperated with the FBI  
8 in coming downtown and being printed, even though he had  
9 counsel, didn't tell his lawyer, he just cooperated with them.  
10 And then in 2007, that fine prosecutor, Mr. John O'Brien,  
11 called him as a witness. And he testified against a club  
12 member in a felon in possession case in front of Judge Zatkoff.

13           Now, to suggest that he's a danger, he's this  
14 incredible person, I think just is the Government talking out  
15 of both sides of its mouth. The real question is can you make  
16 an individualized determination that he is eligible for bond,  
17 and I think he is.

18           THE COURT: Was the Government saying at some point,  
19 though, do you say okay, you're right, and there have been  
20 interviews and you've received bond and you have complied, but  
21 at some point, you do become a danger, because then the pattern  
22 becomes too much. So 2005, and then 2007, and then 2009, and  
23 now we have an indictment that suggests there may have been  
24 conduct throughout this entire period that maybe nobody knew  
25 about.

1 MR. MATEO: But what is the evidence of danger? They  
2 have the burden of having to show by clear and convincing  
3 evidence he's danger to the community. They write a proffer  
4 where they list one, one act of violence after another,  
5 killings, assaults and all that. In my proffer, I say he had  
6 nothing to do with that. They don't rebut that. They are not  
7 suggesting he was involved in any of those acts of violence.

8 He's charged with a felon in possession case in this  
9 court, I think it's 2008. And that case was ultimately  
10 dismissed on motion of the Government.

11 There is no evidence at all that he's ever threatened  
12 or hurt or done anything that's dangerous to the community. If  
13 anything, my, my proffer shows he's working with this  
14 Pentecostal church. He's out there delivering food. He's home  
15 with his wife and his stepdaughter, who has a three-year-old.  
16 He's taking care of them. He's taking care of his elderly  
17 parents who are chronically ill. I have letters here, Judge,  
18 from, from kids in the family who are saying he's a great guy;  
19 he's not a danger. He's been a benefit to the community. He's  
20 been a benefit to the, to the family.

21 For the Government to suggest he's a danger, well,  
22 then they have the burden of proving by clear and convincing  
23 evidence, not argument, that he's a danger. And they are  
24 referring to wiretaps and all sorts of things, but they haven't  
25 produced anything. They have not produced one shred of

1 evidence that proves he is a danger to the community. And  
2 that's --

3 THE COURT: In the indictment, does it indicate the  
4 wiretaps and the conduct that I assume Ms. Mohsin is referring  
5 to here today?

6 MR. MATEO: And that's what creates the presumption.  
7 And what I'm saying, your Honor, is we could rebut that  
8 presumption. And with the proffer that we have filed with this  
9 court, we have rebutted that presumption. There are  
10 combinations, or conditions or combination of conditions that  
11 will take care of whatever issues may, may -- the Court may be  
12 concerned about with regard to danger to the community.

13 His wife is in the courtroom, Wanda Rich. She will  
14 sign a third party custody agreement. He can get back to work  
15 and get back to take care of his family and his parents.

16 You can tether him if you wish, but there are  
17 conditions that, that will address and mitigate your concerns  
18 about whatever the allegations are that the Government is  
19 making right now that he may be this "danger."

20 I just think it's not -- it's disingenuous. They are  
21 using him as a witness when they want to. They were able to  
22 convict that, that fellow motorcycle club, Mr. Victor Castano,  
23 in part based on his testimony. And now to suggest that he  
24 can't be trusted, that he can't -- he's a danger, he's a flight  
25 risk, it's disingenuous.

1 THE COURT: Okay. Ms. Mohsin, do you want to have  
2 argument?

3 MS. MOHSIN: I object to the characterization that the  
4 Government's request for detention of a defendant who has been  
5 indicted for RICO, being a leader in an organization that is  
6 involved in the types of activities that are set forth in the  
7 indictment, that that is somehow disingenuous with an  
8 individual of this -- with this sort of track record.

9 I would just add for the Court that during the  
10 execution of search warrants at this individual's home, which  
11 occurred on more than one occasion, drugs, drug trafficking  
12 related evidence, firearms were repeatedly found at this  
13 defendant's home.

14 He has been engaged in ongoing activity, that's what  
15 the investigation has shown, for a number of years, during some  
16 periods of time, he was on probation for other offenses. The  
17 stakes have never been this high for Mr. Rich because most of  
18 the offenses that he has been involved with since 1982,  
19 actually, were not as serious as this one. So I would just  
20 state for the record that we object to any characterization  
21 that this is a disingenuous request.

22 The Government has 41 defendants in this case. We  
23 have carefully selected defendants that we have sought  
24 detention for based upon the factors and their conduct as  
25 alleged in the indictments. And so for those reasons, we would

1 ask that the defendant be detained.

2 THE COURT: Tell me again your understanding of what  
3 the additional information is that was provided to Pretrial  
4 Services that --

5 MS. MOHSIN: Judge, we --

6 THE COURT: -- may have played a factor in altering or  
7 changing the recommendation.

8 MS. MOHSIN: Your Honor, I would have to have both  
9 reports in front of me. But when we initially looked at the  
10 Pretrial Services' report, and I think that the report that I  
11 originally looked at about two weeks ago or so for Mr. Rich was  
12 similar to the one that Mr. Dwyer had prepared in an earlier  
13 case. That report was deficient in that it did not contain two  
14 felony convictions that this defendant was convicted of,  
15 including the one from Kansas in which my understanding is that  
16 he was engaged in violations, repeated violations of probation  
17 that led to that being revoked. But I have provided those  
18 documents to Pretrial Services, and I don't have those in my  
19 possession. I turned them over to Pretrial Services.

20 So there was the Kansas conviction. There was a later  
21 conviction. I would have to compare the two. But there were  
22 more -- there were at least two felony convictions that were  
23 not included. And as I look at this right now, I see  
24 additional charges and convictions that I, I don't recall  
25 seeing. So if we were to look at the two in comparison to one

1 another, it would be obvious what had not previously been  
2 reported.

3 MR. MATEO: Your Honor, let's be accurate. There's a  
4 memorandum attached to Pretrial Services' report, it's dated  
5 today's date, July 31st. And the only case that is referred to  
6 Mr. Hinojosa in that memorandum is the reference to the Kansas  
7 case, the 1990 Kansas case. And if that's what's changed, what  
8 I'm saying, your Honor, is that is not clear and convincing  
9 evidence that he is danger to the community, that he at one  
10 point in time in the '90s didn't return to Kansas for violating  
11 his probation. That's, that's -- you know, he has a track  
12 record since then that shows he has taken care of business when  
13 it comes to complying with the court's orders.

14 THE COURT: Okay. Anything else you'd like to say in  
15 terms of argument?

16 MR. MATEO: No, your Honor.

17 THE COURT: Ms. Mohsin?

18 MS. MOHSIN: Nothing further from the Government, your  
19 Honor.

20 THE COURT: Counsel, what I'd like to do, I apologize,  
21 I've not had the chance to review the Pretrial Service report.  
22 I have had the chance to review your briefs. I'd like to  
23 re-review them. I'd like to review the Pretrial Service  
24 report, as well as some of the specific provisions of the  
25 superseding indictment. So I'd like to finish the remainder of

1 the docket and review those matters. And then we'll reconvene  
2 and I'll issue my ruling, why don't we say 3:30.

3 MS. MOHSIN: Thank you, your Honor.

4 THE COURT: Okay? Thank you.

5 MR. MATEO: Thank you, Judge. Appreciate it.

6 THE DEFENDANT: Thank you, ma'am.

7 (Recess taken at 2:03 p.m. until 3:35 p.m.)

8 THE CLERK: The Court recalls cases 11-20129 and  
9 11-20066. USA vs. Vernon Rich.

10 MS. MOHSIN: Saima Mohsin appearing on behalf of the  
11 United States, your Honor. Good afternoon.

12 MR. MATEO: Good afternoon, your Honor. Juan Mateo,  
13 appearing on behalf of Mr. Vernon Rich, who stands to my left.

14 THE COURT: Good afternoon again, counsel, and Mr.  
15 Rich. I appreciate the parties' patience, and Mr. Rich, yours  
16 as well.

17 It's a lot of information to review and go over. I  
18 did want to have that opportunity, as I said, to review the  
19 parties' submissions, to review the Pretrial Services' report,  
20 as well as some of the information contained in the indictment.  
21 You both made compelling arguments.

22 These are often, Mr. Rich, very difficult cases.

23 The parties acknowledge that this is a presumption  
24 case. I do note as well, though, the defendant has come  
25 forward with some evidence to rebut the presumption. There's



1    been a representation that, that Mr. Rich has known about the  
2    investigation underlying the allegations since 2009 and there's  
3    been no attempt to flee, and there's been some history of  
4    complying with bond conditions in this district.

5           There are a number of factors that the Court has to  
6    consider in determining whether to detain or release the  
7    defendant pending trial. And those factors are, first, the  
8    nature and circumstances of the offense charged, including  
9    whether the offense is a crime of violence or involves a  
10   narcotic drug.

11           The defendant is charged here in two separate  
12   indictments, and both do involve narcotic drugs. One case  
13   alleges that the defendant was a high-ranking member of the  
14   Devils Diciples Motorcycle Gang, and that he actively  
15   participated in and supervised the group's criminal activity  
16   for a long period of time, including the distribution of large  
17   amounts of methamphetamine, hydrocodone and other controlled  
18   substances, and engaged in illegal gambling operations.

19           The Court has to consider as well the weight of the  
20   evidence against the defendant. Both cases involve  
21   indictments, so there's been probable cause findings by a grand  
22   jury.

23           The Government, in their submission, indicates that  
24   they have wiretap interceptions, cooperating witness  
25   statements, searches of Defendant's home that show that the

1 defendant was engaged in drug trafficking, including  
2 methamphetamine manufacturing and distribution, marijuana and  
3 hydrocodone distribution. They give some specific examples of  
4 that, that are identified in the third superseding indictment.

5 They also indicate that search warrants executed at  
6 Mr. Rich's home on different dates have led to seizure of  
7 drugs, drug trafficking materials, firearms and ammunition.

8 The Court also has to consider the history and  
9 characteristics of the defendant. The parties provide  
10 conflicting versions of Mr. Rich's character. The Government  
11 focuses on the criminal history, what they claim are the  
12 defendant's attempts to mislead the court and obstruct justice  
13 in some prior circumstances.

14 The defendant focuses on, or I'm sorry, the Government  
15 also focuses on, on Mr. Rich's role with a dangerous motorcycle  
16 gang while the defendant focuses more on Mr. Rich's family  
17 life.

18 He's been a lifelong member of this community. He has  
19 strong family ties, including a strong family support at this  
20 proceeding. He has strong community support. There's  
21 information regarding long term employment, although the  
22 Government counters that that employment involved some drug  
23 distribution with co-employees and customers.

24 The Pretrial Services' report also indicates there's  
25 been a prior history of substance abuse. The defendant has

1 pointed out that on two prior occasions, this Court has given  
2 defendant bond. But the flip side is the defendant does have a  
3 significant criminal history going back to the 1980's. And  
4 while the early convictions are, are mainly misdemeanors, the  
5 charges do appear to have escalated. There's a 1990 offense  
6 out of Kansas for which the defendant ultimately did abscond  
7 from supervision for a period of time.

8 There's a 2005 conviction for marijuana possession for  
9 which Mr. Rich received 30 days and two years' probation; a  
10 2007 possession of methamphetamine conviction that resulted in  
11 two years' probation.

12 And what does concern the Court is that I do have to  
13 take the allegations in the indictment, because that's what's  
14 before me, is that it does appear that while -- that Mr. Rich  
15 was on probation during the time of the two indictments at  
16 issue, especially the 2005 conviction for which he received two  
17 years of probation. The one indictment indicates that the  
18 conduct goes through the present. The other indictment  
19 indicates drug distribution activity from 2003 to 2006, and  
20 that's another factor the Court has to consider is whether at  
21 the time of the current offense or arrest, the defendant was on  
22 probation, on parole, or other release pending trial.

23 It doesn't appear that he was at the time of the  
24 arrest, but it does appear that he was on supervised release at  
25 the time of the, of the offenses that have been charged.

1           The Court also has to consider the nature and  
2           seriousness of the danger to any person or the community that  
3           would be posed by the defendant's release.

4           There is a history, as I said, of drug trafficking  
5           activity, which does present a danger to the community. The  
6           Government proffered that it occurred with some of Defendant's  
7           co-employees at his place of employment.

8           The defendant does have a prior felony conviction and  
9           knows he can't possess a weapon. And yet, the Government  
10          proffered that search warrants have revealed -- did reveal a  
11          firearm and ammunition in his home resulting in a felon in  
12          possession charge.

13          So taking all of the factors into consideration,  
14          including the presumption which you still consider in terms of  
15          analyzing the factors, I do think the Government has met its,  
16          its burden by clear and convincing evidence that no condition  
17          or combination of conditions will reasonably assure the safety  
18          of any other person.

19          So I am going to order that Mr. Rich be detained. And  
20          I will issue a written order to that effect. You do have a  
21          right to appeal that order. And this case has been assigned to  
22          Judge Cleland. And so he will schedule your next court  
23          appearance in this matter.

24                 Thank you, counsel.

25                 MS. MOHSIN: Thank you, your Honor.

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MR. MATEO: Thank you.

THE DEFENDANT: Thank you, ma'am.

THE CLERK: Court is in recess.

(Proceedings adjourned at 3:43 p.m.)

\* \* \*

**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript  
from audio recorded proceedings in the above-entitled cause on  
the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, CSR, RPR, FCRR, CRR  
Federal Official Court Reporter